
HOUSE BILL No. 1200

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-8-1.1.

Synopsis: Injuries to or death of an employee. Provides that certain employers or their agents that cause: (1) serious bodily injury to an employee as a result of a reckless, knowing, or intentional violation of certain administrative rules commit a Class A misdemeanor; (2) the death of an employee as a result of a reckless violation of certain administrative rules commit corporate manslaughter, a Class D felony; and (3) the death of an employee as a result of a knowing or intentional violation of certain administrative rules commit corporate manslaughter, a Class C felony. Authorizes a private right of action for the failure to warn of certain conditions under the state occupational safety and health act. Makes conforming amendments.

Effective: July 1, 2008.

Stevenson

January 10, 2008, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1200

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-8-1.1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. As used in this chapter, unless otherwise provided:

"Agent of the employer" means a:

(1) manager having management authority or enforcement powers with respect to a product, practice, or service;

(2) corporate officer; or

**(3) member of the board of directors;
of the employer.**

"Board" means the board of safety review created by this chapter.

"Bureau" means the safety education and training bureau created by this chapter.

"Commission" means the occupational safety standards commission created by this chapter.

"Commissioner" means the commissioner of labor or **his the commissioner's** duly designated representative.

"Department" means the department of labor.



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"Employee" means a person permitted to work by an employer in employment.

"Employer" means any individual or type of organization, including the state and all its political subdivisions, that has in its employ one (1) or more individuals.

"Political subdivision" has the meaning set forth in IC 36-1-2-13.

"Safety order" refers to a notice issued to employers by the commissioner of labor for alleged violations of this chapter, including any health and safety standards.

"Serious bodily injury" has the meaning set forth in IC 35-41-1-25.

"Standard" refers to both health and safety standards.

"Voluntary protection program" means a program offered by the United States **Department of Labor**, Occupational Safety and Health Administration to employers subject to this chapter that exempts the employers from general scheduled inspections.

SECTION 2. IC 22-8-1.1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. Each employer shall establish and maintain conditions of work which are:

- (1) reasonably safe and healthful for employees; and
- (2) free from recognized hazards that are causing or are likely to cause death or serious ~~physical harm~~ **bodily injury** to employees.

SECTION 3. IC 22-8-1.1-3.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3.1. Every employer **or agent of the employer** shall:

- (1) comply with the occupational health and safety standards promulgated under this chapter; and
- (2) pursuant to any directions in such standards, keep ~~his the~~ employees informed of:
 - (A) their protections and obligations under the chapter; **and**
 - (B) the hazards of the workplace and suitable precautions, relevant symptoms, and emergency treatment for such hazards.

SECTION 4. IC 22-8-1.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. No person, **employer, or agent of the employer** may:

- (1) interfere with the use of any method or process adopted for the protection of any employee in ~~his the employee's~~ employment or place of employment, or of any other person lawfully within the place of employment; or
- (2) fail to follow orders necessary to protect the life, health, and safety of employees and any other person lawfully within the

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place of employment.

SECTION 5. IC 22-8-1.1-17.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17.1. (a) Any standard promulgated under this chapter shall prescribe the use of labels or other appropriate forms of warning ~~as are~~ necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such a standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with the hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary for the protection of employees. In addition where appropriate, any standard shall prescribe the type or frequency of medical examinations or other tests which shall be made available by the employer, at employer's cost, to employees exposed to hazards in order to most effectively determine whether the health of the employees is adversely affected by the exposure. Upon request, the results of examinations or tests shall be furnished to the department and shall remain confidential within the department. At the request of the employee, results shall be furnished to ~~his~~ **the employee's** physician.

(b) The commission, in promulgating standards dealing with toxic materials or harmful physical agents, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard dealt with by the standard for the period of ~~his~~ **the employee's** working life. Development of standards shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(c) The commission, in promulgating standards, shall adopt rules requiring employers to maintain accurate records of employee exposures to potentially toxic material or harmful physical agents which are required to be monitored or measured under the standards. These rules shall provide employees or their representatives with an opportunity to observe monitoring or measuring and to have access to

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the records thereof. These rules shall also make appropriate provisions for each employee to have access to such records as will indicate ~~his~~ **the employee's** own exposure to toxic materials or harmful physical agents. Under these rules, each employer **or an agent of the employer** shall notify any employee who is being consistently exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an occupational safety and health standard and shall inform any employee who is ~~being~~ thus exposed of the corrective action being taken.

SECTION 6. IC 22-8-1.1-37.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 37.1. **(a)** No person may make a false statement, representation, or certification in any application, record, report, plan, or other document required pursuant to this chapter.

(b) An employer or agent of the employer may not destroy or negligently or intentionally allow the destruction of documents concerning hazards to the public or the employees of the employer.

(c) The falsification or destruction of each document constitutes a separate offense.

SECTION 7. IC 22-8-1.1-39.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 39.1. (a) Whenever the commissioner is of the opinion that imminent danger exists in any workplace in this state, which condition can reasonably be expected to cause death or serious ~~physical harm;~~ **bodily injury**, the commissioner, through the attorney general, may petition the circuit court of the county in which ~~such the~~ workplace is located for appropriate relief. Any order issued under this section may require ~~such~~ steps to be taken ~~as may be~~ necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where ~~such the~~ imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove ~~such the~~ imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, ~~he the~~ **the inspector** shall inform the affected employers and employees of the danger and that ~~he the~~ **the inspector** is recommending to the commissioner that relief be sought.

(c) If the commissioner arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such

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1 failure, or the representative of such employees, may bring an action
 2 against the commissioner, in the circuit court of the county in which the
 3 imminent danger is alleged to exist or the employer has its principal
 4 office, for a writ of mandamus to compel the commissioner to seek
 5 such an order and for such further relief as may be appropriate.

6 SECTION 8. IC 22-8-1.1-48.3 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 48.3. **(a) Except as**
 8 **provided in subsection (b)**, nothing in this chapter shall be construed
 9 to supersede or in any manner affect any worker's compensation or
 10 occupational diseases law, or any other statutory rights, duties, or
 11 liabilities or create any private right of action.

12 **(b) An employee who is harmed by the failure of the employee's**
 13 **employer or an agent of the employer to inform the employee of**
 14 **the responsibilities of the employer or agent under section 3.1 of**
 15 **this chapter may file a civil action for relief.**

16 SECTION 9. IC 22-8-1.1-49 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 49. **(a) Subsections (c)**
 18 **through (e) do not apply to:**

19 **(1) the state; or**

20 **(2) a political subdivision.**

21 **(b) A person who knowingly violates this chapter commits a Class**
 22 **B misdemeanor, except as otherwise provided.**

23 **(c) An employer or agent of the employer who:**

24 **(1) recklessly, knowingly, or intentionally violates a rule**
 25 **adopted under this chapter; and**

26 **(2) causes serious bodily injury to an employee;**
 27 **commits a Class A misdemeanor.**

28 **(d) An employer or agent of the employer who:**

29 **(1) recklessly violates a rule adopted under this chapter; and**
 30 **(2) causes the death of an employee;**

31 **commits corporate manslaughter, a Class D felony.**

32 **(e) An employer or agent of the employer who:**

33 **(1) knowingly or intentionally violates a rule adopted under**
 34 **this chapter; and**

35 **(2) causes the death of an employee;**
 36 **commits corporate manslaughter, a Class C felony.**

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